

1 UNIVERSAL CITY STUDIOS, INC.

2 v.

82 Civ. 4259 RWS

3 NINTENDO OF AMERICA CO., LTD.

4 May 28, 1985

5 9:55 a.m.

6 (In open court)

7
8 MR. KIRBY: Your Honor, in connection with the
9 examination of Mr. Hadl, on several points on Thursday
10 afternoon we got into the question of the extent of the
11 defense being asserted by Universal and consequently the
12 extent of the waiver of the attorney-client privilege.

13 Your Honor, I think everything is clear now. I
14 may be a little dense about this. I just wanted to make
15 sure I did understand where we were and perhaps it would be
16 helpful if I stated my understanding and then if I've
17 mischaracterized or done anything else I'm sure someone
18 will tell me.

19 My understanding is that we have charged
20 tortious interference with our contracts and interference
21 with our prospective economic advantage. Mr. Fairhurst is
22 correct that he's raised various defenses, legal and some
23 factual, to those claims. But one of the defenses is that
24 they were privileged to do that because they were acting on
25 advice of counsel.

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1 Now, the same issue, obviously, underlies our
2 claim for exemplary damages. We have taken the opposite
3 position. We have said they were not privileged because
4 they were not acting in good faith, indeed, they were
5 acting in bad faith. It is my understanding, based on the
6 dialogue among counsel and the court, particularly the
7 dialogue beginning at around 800 and going through 810, the
8 subject was revisited several times that it is the court's
9 understanding, confirmed by Mr. Fairhurst, that the advice
10 of counsel to which Universal is pointing is the advice of
11 Mr. Kroft and that they concede having interjected that
12 defense in the words of the cases they have waived the
13 attorney-client privilege with respect to that.

14 And I indeed had been inquiring of both Mr. Hadl
15 and Mr. DiMuro about that advice without objection. Once
16 we hit a date, and I gather the date arrived at here on
17 Thursday, was the date after the Arakawa, Lincoln,
18 Sheinberg, Hadl meeting, May 22, that will be considered a
19 retention date of Townley & Updike.

20 Thereafter, it is Universal's intention to
21 insert the privilege about conversations of an
22 attorney-client nature between Townley & Updike and
23 Universal and that those assertions that are privileged
24 will be upheld. The counterpart of that is that they are
25 not injecting a defense of relying on Townley & Updike.

1 With respect to the major substantive claims
2 we're making, your Honor, and the exemplary damage claim
3 which we assert flows from that, that's my understanding of
4 the defense, the limitation of the defense and the
5 consequent limitation on me.

6 That's what I read from the transcript and I
7 think that's right. If I am wrong I would like to be told
8 now so that we can clear that up.

9 MR. FAIRHURST: At page 800 of the transcript I
10 think the question was raised as to advice of counsel. We
11 have to be clear. Advice of counsel as to what? The
12 lawsuit was initiated June 29. The decision to take that
13 lawsuit was made in conjunction with -- I don't know if
14 it's the 20th or 21st as Mr. Kirby puts it. We'll say that
15 is a good working date for the purposes of determining
16 whether the privilege attaches.

17 So if the question before the house is whose
18 counsel is being relied upon for the determination as to
19 whether suit ought to be brought, my understanding is
20 identical to Mr. Kirby's. We are talking about Kroft and
21 to a certain extent ^{Di Muro} internally as to the advice he gave
22 and indeed that's why he was produced here.

23 If Mr. Kirby is fixing on well, the decision to
24 write other Donkey Kong licensees, that decision -- I don't
25 want to use the word decision -- the act of doing so, the

1 act of writing those letters, was done approximately nine
2 months after the lawsuit was in progress and Mr. Hadl has
3 testified that that was done in conjunction with counsel.

4 But the lawsuit already existed and that
5 decision to write licensees it would seem to me for
6 argument purposes here would flow naturally from the
7 decision to bring the lawsuit.

8 If the lawsuit was maintained in good faith and
9 brought in a honest belief and was not a sham lawsuit,
10 which we contend it was not, then the decision to notify
11 other licensees that Nintendo then had outstanding or
12 subsequently developed would also follow from it.

13 It's not a point of issue necessarily. It's a
14 statement of clarification, because I am not certain that
15 the two are as separate as Mr. Kirby suggests in the
16 argument he makes.

17 MR. KIRBY: Your Honor, I think that I
18 understand what Mr. Fairhurst said and I think that what
19 he's saying is in your Honor's words that if these letters
20 are -- shorthand -- bad faith letters that Universal is
21 stuck with them because they flowed naturally out of the
22 bringing of the lawsuit and if we make out our case that
23 bringing of the lawsuit was in bad faith these letters are
24 just further evidence of that, that Townley & Updike, while
25 the author of the letters was simply carrying out in effect

1 what Universal wanted them to do and that since they are
2 stuck with that, that Townley & Updike on behalf of
3 Universal is now not going to assert independently that
4 Universal is relying on them and, therefore, it's a good
5 faith reliance on counsel, that we are all back to Mr.
6 Kroft and as Mr. Fairhurst correctly pointed out, because
7 they made these statements, whatever reliance they had on
8 Mr. DiMuro.

9 And so that I will not be -- your Honor
10 sustained the privilege when I attempted to go into the
11 January 3rd discussions between Mr. Hadl and Mr. Fairhurst
12 and I understand the sustaining of the privilege is on the
13 basis that Mr. Fairhurst has set out, that while they have
14 inserted the defense of good faith reliance on counsel that
15 defense is confined to Mr. Kroft and ~~Mr.~~ *DiMuro*

16 MR. FAIRHURST: I am not going to repeat what I
17 have just said before although it seems to me that there's
18 a problem with the logic that Mr. Kirby is pursuing,
19 because as I see it, any trademark case in which an action
20 is taken, the decision to bring suit against X, the alleged
21 trademark infringer, which is subsequently followed by a
22 decision to send out letters and putting Y, Q and P on
23 notice, Y, Q and P being licensees of X, would
24 automatically invoke the potential of a lawyer who is
25 defending or prosecuting, in this action prosecuting the

1 main claim, would automatically put him in jeopardy of
2 having to testify in the case as to what his advice was to
3 the client as to the writing of those it is letters and I'm
4 not certain that that's the law. I can't resolve that
5 today.

6 I think that's what Mr. Kirby is getting at here.
7 I don't know if your Honor wants to resolve that either. I
8 have a problem with the logic of Mr. Kirby's argument and
9 that's the problem.

10 THE COURT: Thank you all very much, very
11 helpful.

12 MR. KIRBY: Your Honor, I take it that the
13 ruling still is that I should not inquire --

14 THE COURT: Do whatever you want to do. We'll
15 let the chips fall where they may. Who knows, I may
16 reverse myself. I may go in circles, backwards, forwards
17 or I might even be consistent. God only knows. I think I
18 know where I am. History will teach whether I was correct
19 in that belief or not.

20 MR. KIRBY: Thank you, your Honor.

21 ROBERT DONALD HADL, resumed.

22 CROSS-EXAMINATION (CONTINUED)

23 BY MR. KIRBY:

24 Q. Mr. Hadl, we heard testimony from you on
25 Thursday on a number of occasions about the Tiger license

1 and your reaction to finding out about the Tiger license.

2 Now, Mr. Hadl, you were involved in the
3 negotiations of the amendment to the Tiger license, were
4 you not?

5 A. That's correct.

6 Q. And, Mr. Hadl, it's true, isn't it, that the
7 amended Tiger license called for a reduced royalty payment
8 to Universal for the balance of 1982; is that correct?

9 A. That's correct.

10 Q. And that that royalty payment in the case of
11 cartridge, the home video cartridge, went from 6 percent to
12 3 percent and for the tabletop game went from 5 percent to
13 2 and a half percent?

14 A. Mr. Kirby, I don't recollect precisely what the
15 numbers were but I'll assume your representation is correct,
16 without seeing the license again.

17 Q. You approved this amendment?

18 A. Yes, I did.

19 Q. Now, Mr. Hadl, can you tell me today how many
20 cases the Rosenfeld firm is representing Universal or MCA
21 in?

22 A. At this moment in time?

23 Q. At this moment in time.

24 A. When you say representing MCA, do you mean cases
25 actually in litigation or potential claims; what number do

1 you want?

2 Q. I guess, Mr. Hadl, I am talking about cases that
3 fall directly within the ambit of your responsibility as
4 supervisor of outside litigation. How many cases actively
5 in litigation filed in a court is the Rosenfeld Meyer
6 representing Universal/MCA on?

7 A. That's hard for me to estimate at the moment
8 because I have to consider a variety of subject matters.
9 If you'll give me about 30 seconds to let me think.

10 (Pause)

11 A My own best estimate at the moment would be
12 approximately 50.

13 Q. 50?

14 A. Yes.

15 Q. Are those cases in state and federal courts?

16 A. That's correct.

17 Q. Are they all in California?

18 A. I have to think again. You say are they all in
19 California?

20 Q Yes.

21 (Pause)

22 A I think the majority of them are in California.
23 There are some that are not.

24 Q. Can you tell me where some of those that are not
25 in California are filed?

1 A. When I said there are some that are not in
2 California. They have had an associate role, that is to
3 say, there have been other counsel retained.

4 Q. I am sure.

5 A. They followed cases. There was one recently in
6 Chicago. That's the one I was thinking of.

7 Q. Any others.

8 A. When you say involved, you mean that their names
9 are on the papers?

10 Q. Yes.

11 A. At the moment I can't think of any other and on
12 the one in Chicago I am not clear their names are on the
13 papers.

14 Q. Does Universal have other litigation pending in
15 which the Rosenfeld firm is not involved?

16 A. Yes.

17 Q. Did you ask Mr. Kroft to represent you in this
18 action against Nintendo; yes or no?

19 A. Will, I'm confused as to the time frame you are
20 asking the question about, because we did ask many after he
21 played the game to prepare the telex and I'm not clear
22 about what --

23 Q. I'm sorry. Let me clear that up.

24 Did you ask Mr. Kroft to file this complaint for
25 you?

1 A. In this court? No.

2 Q. In any court.

3 A. Originally, as I think I testified on Thursday,
4 I asked him to go ahead and prepare the complaint. I did
5 not ask him to file the complaint in this court.

6 Q. Did you ask him to file this case, this
7 complaint, which he prepared in any court, any court?

8 A. No, I did not.

9 Q. Did Mr. Kroft tell you, in words or substance,
10 that he would prefer not to represent you in this action if
11 it were filed in California?

12 A. No, he did not.

13 Q. You testified, Mr. Hadl, that Universal was
14 interested in obtaining a speedy resolution of its claim
15 against Nintendo; is that correct?

16 A. That's correct.

17 Q. Did Universal at any time file a motion for a
18 preliminary injunction?

19 A. Against Nintendo, no.

20 Q. Well, against anyone else involved with Donkey
21 Kong?

22 A. No. I think the reason we didn't file for a
23 preliminary injunction was at that time -- and again this
24 goes to advice of counsel but I guess I can speak about
25 this. The game had been on the market for some many months.

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1 It had been on the market at that point in June of 1982, it
2 had been on the market for approximately a year. Most of
3 the machines were out there. It was our best judgment at
4 that moment that we would not be able to obtain a
5 preliminary injunction.

6 Q. Other than what you have testified to and that
7 is that you were interested in obtaining a speedier
8 resolution, is there any other reason why you and Mr. Kroft
9 decided this bring this action in the Southern District of
10 New York rather than in any other federal court?

11 A. Mr. Kirby, to the best of my recollection that
12 was the reason we decided to bring the action here.

13 Q. Did you consider the state of the calendars in
14 any of the other federal district courts?

15 A. I testified on Thursday that at that time Mr.
16 Kroft was involved with us in the Sony Betamax case and it
17 was his judgment and mine, after considering the matter,
18 that we, as I have indicated, that we would be in a better
19 position to get a quicker resolution here in New York than
20 we would in California.

21 Q. Did you discuss, you, Mr. Hadl, with any
22 representative of Coleco the question of whether or not
23 Universal would seek a preliminary injunction?

24 A. To the best of recollection, I shared with them
25 my view that I would not seek a preliminary injunction.

1 Q. It's true, isn't it, that Coleco was interested
2 in Universal not bringing a preliminary injunction?

3 A. Against Nintendo?

4 Q. Against Nintendo.

5 A. I am not -- I don't recollect that.

6 Q. Mr. Hadl, you did testify on Thursday that your
7 understanding of the April 27th lunch between Coleco and
8 representatives of Coleco and Mr. Sheinberg, that it was to
9 discuss a general, overall business matters, that its
10 purpose had not been to discuss Donkey Kong?

11 A. That's correct.

12 Q. Is that correct?

13 A. That's correct.

14 Q. It's also true that Coleco had been a licensee
15 of Merchandising and that they were anxious and interested
16 in doing things with Universal; is that correct?

17 A. I became aware of that subsequent to the lunch.
18 The answer to that, to my knowledge, now, that's correct.

19 Q. Did you become aware of that immediately after
20 the lunch?

21 A. Of what?

22 Q. That you just said that you were an aware of of,
23 that Coleco had been a licensee of Merchandising and they
24 were anxious and interested to do more things with
25 Universal.

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1 A. I would say that my knowledge of Coleco being a
2 licensee and aware of doing more business with Universal I
3 became aware of after the lunch but as these evolved.

4 Q. You have testified you have had various
5 conversations with Mr. Schwefel, Mr. Hadl. Did Mr.
6 Schwefel tell you in words or substance during any of these
7 conversations that Coleco did not want the Donkey Kong
8 matter to impair future business dealings between Universal
9 and Coleco?

10 A. He didn't say that in specific words. My own
11 view is that the decision of Universal and Coleco to arrive
12 at a settlement of what was an outstanding difference was
13 certainly evidence of an intention of good faith on both
14 parties to try to resolve a problem and to continue a
15 business relationship.

16 Q. During any of those conversations with Mr.
17 Schwefel, did you ever have any understanding about what
18 Coleco's marketing goal was for Colecovision?

19 A. I can't answer that at the moment because I
20 don't know what you mean by Coleco's marketing goal.

21 Q. Did Mr. Schwefel tell you things like this, in
22 words or substance: We expect to sell a million
23 Colecovision games with Donkey Kong cartridges?

24 A. I don't recall any estimates of being made along
25 those lines.

1 I recall estimates of how many cartridges they
2 might tell but I don't recall the combination of the way
3 you just put it of machines and cartridges.

4 Q. How many cartridges did he tell you he thought
5 he was about to sell?

6 A. I would have to try to recollect and do the
7 numbers again. My best recollection is that they hoped, of
8 course this was on only a future hope at that time, that
9 they hoped to sell a substantial number of cartridges.

10 Q. Mr. Hadl, when did you first become aware that
11 the video game media was becoming an enormous business?

12 A. I had general awareness from my children who
13 went to the arcades and played video games that -- I don't
14 know if I would at that point call it an enormous business --
15 that it was a business and emerging business.

16 Q. Did you discuss this business as an opportunity
17 for Universal with anyone at Universal or MCA prior to May
18 1st, 1982?

19 A. I just don't remember at this moment.

20 Q. Did Mr. Sheinberg discuss with you his desire to
21 create a MCA video games division in the time period around
22 the end of April, beginning of May, 1982?

23 A. Mr. Kirby, my best recollection is that Mr.
24 Sheinberg made some decision along those lines. I don't
25 exactly have the time frame. My best recollection at this

1 moment is that it was subsequent to that. I could be
2 corrected.

3 Q. It's true, isn't it, that there was a video
4 games division formed and announced on June 6th, 1982,
5 three weeks before the complaint in this action was filed;
6 do you remember that?

7 A. On your representation that that was the date,
8 yes, I do recollect there was an announcement about that.

9 Q. Prior to the time of the formation of that
10 division and that announcement, did you have any discussion
11 with Mr. Sheinberg about the formation of such a division?

12 A. My best recollection is that I may have been
13 advised about it. I had very little to do with it.

14 As I recall -- there was one person involved --
15 when you say the formation of a division, I believe
16 essentially there was one person who was then employed
17 already by the company that Mr. Sheinberg gave these duties
18 to. As I recall, the reason for the announcement was the
19 notion that if the business was emerging Universal
20 preferred to see if they could partner in it with a joint
21 venture basis rather than just be a licensee of properties.

22 Q. Did Universal view Coleco as a possible joint
23 venture partner at that time?

24 A. Yes, it did.

25 Q. Did it view Nintendo as a possible joint venture

1 the question was raised by the gentleman from Coleco, that
2 is to say, the counsel who was with Mr. Schwefel.

3 My recollection is hazy on whether or not the
4 question was also raised by Mr. Lincoln and/or Mr. McGee.

5 Q. But you are confident that Coleco, through its
6 lawyer, raised the question on May 6th?

7 A. That's my best recollection.

8 Q. You also know, Mr. Hadl, and have so testified,
9 that by May 5 Universal and Coleco already had a deal; is
10 that correct?

11 A. That's correct.

12 Q. Mr. Hadl, you have testified that you sent on,
13 in effect, as an intermediary a stack of documents from Mr.
14 Kroft to Townley & Updike; is that correct?

15 A. That's correct.

16 Q. You also testified that you didn't read them or
17 didn't read them line for line but had leafed through them
18 in the process of acting as the intermediary between Mr.
19 Kroft and Mr. Fairhurst; is that correct?

20 A. That's correct.

21 Q. Can you tell me whether that stack of documents
22 contained anything that was not a part of the -- what I
23 will generally call -- the RKO litigation?

24 MR. FAIRHURST: Objection.

25 THE COURT: Overruled.

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1 A. To the best of my recollection, I don't remember.
2 I don't remember whether there was anything in there that
3 was not a part of the RKO litigation.

4 Q. Did you make more than one transmission from Mr.
5 Kroft to Mr. Fairhurst prior to the institution of this
6 action?

7 A. I may have but I don't remember.

8 Q. When you sent the package of RKO documents, was
9 the draft complaint included with them?

10 A. I don't remember. I may have sent that or Mr.
11 Kroft may have sent it directly.

12 Q. Did you read the draft complaint that Mr. Kroft
13 prepared?

14 A. My best recollection is that I saw it but I
15 would have a lot of trouble at the moment trying to
16 recollect exactly what was in it.

17 Q. Let's see if we can reach an intermediate
18 position, Mr. Hadl.

19 My question was: Did you read it, not whether
20 or not you recall today what was in it but did you read it?

21 A. My best recollection is that I did.

22 Q. Was that sometime in May of 1982?

23 A. I'm having trouble with the time frame. My best
24 recollection is, yes, it would have been that time frame.

25 Q. Did you read the complaint that was filed in

1 MR. FAIRHURST: Asked and answered now for the
2 third time.

3 MR. KIRBY: I will withdraw the question.

4 Q. Did you -- I think you may have told us this
5 already on Thursday, and if so I apologize, Mr. Hadl. I
6 take it you did not send Ms. Sifuentes' memorandum of May 2,
7 with its attachment, to Mr. Fairhurst prior to the filing
8 of this complaint.

9 MR. FAIRHURST: Objection on the same basis.

10 THE COURT: Overruled.

11 A. To the best of my recollection, no.

12 Q. Did you personally tell anyone at Townley &
13 Updike that you had had some concern about Universal's
14 prior position on the public domain status of King Kong
15 prior to the filing of this complaint?

16 MR. FAIRCHILD: Now, your Honor, I have to pose
17 an objection, and we are now on the periphery if not in,
18 indeed, into the attorney-client privilege, because if the
19 privilege doesn't protect what the client tells me it
20 protects very little of anything, and I am going to stand
21 on that privilege.

22 I have to pose the objection at this point
23 because if I don't I run the risk of a waiver, and then we
24 will have to hear Mr. Kirby tell me that I have to produce
25 everything in my firm's files and answer all kinds of

1 questions about the conduct of the litigation, which I
2 don't think would be proper, nor is he entitled to it under
3 the circumstances of this case in this context.

4 THE COURT: Sustained.

5 MR. KIRBY: Your Honor, I would like to address
6 this to the Court for possible clearing up with Mr.
7 Fairhurst, because we've had, in addition to my other
8 problems, a date problem. The date has been arrived at as
9 something like May 22 as a sort of consensus between
10 Universal and its counsel as to date of retention.

11 Mr. Fairhurst has written to me as part of our
12 sometimes frequent correspondence indicating to me that it
13 was -- and I quote this "I accept that Universal has waived
14 its attorney-client privilege on the matter of advice given
15 on rights in King Kong prior to the institution of this
16 lawsuit or the bringing of this lawsuit."

17 I take it that what I am now hearing is that
18 that qualified but fairly broad statement is further
19 qualified to mean that it doesn't include anything that was
20 attorney-client with respect to Townley & Updike prior to
21 the bringing of the lawsuit.

22 THE COURT: That's the way I hear it.

23 MR. KIRBY: I don't want to have this letter
24 quoted back to me in some appellate court that he had
25 waived it and I had failed to examine.

1 THE COURT: God forbid this go to appellate
2 court, but in that case my view of it is that Townley,
3 Updike's advice to Universal is privileged.

4 MR. KIRBY: Your Honor, I will take no more than
5 ten seconds on this, because it is my duty to inform you
6 that my basis for saying that there is a waiver, and that
7 that ruling would be incorrect, is that they had
8 interjected Townley, Updike's advice as a defense.

9 THE COURT: I don't take Townley, Updike's
10 advice as a defense for the reason it comes too late.

11 MR. KIRBY: Thank you, your Honor.

12 THE COURT: Of course I may change my mind when
13 I get to another stage in this matter.

14 MR. KIRBY: I hope not.

15 MR. FAIRHURST: The only comment I can make is
16 the point of the attorney-client privilege in this context
17 does not work with mathematical certainty, and my only
18 objection to the way Mr. Kirby puts this is the seeking for
19 precision which we all seek, and it just is not going to
20 work in the context of this case.

21 I think your Honor's ruling is correct, and it
22 makes sense, and is workable under these circumstances.

23 I don't know where you go down the line with it
24 for future questions on future issues, but it is premature
25 to try to grapple with something not before us.

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1 I don't think the question Mr. Kirby put to Mr.
2 Hadl, other than the one to which I objected and which your
3 Honor sustained, gets into that

4 THE COURT: Where it gets tricky is the issue of
5 good faith is obviously a critical issue. It can be viewed
6 in a lot of different ways. The rubric of good faith cuts
7 across, as I see it, all three of the claims of Nintendo.

8 Now, whether you call it good faith or you term
9 it something else, as far as I'm concerned the letters of
10 January 3, 1983, if that's the right date, although written
11 by brother Fairhurst in an excess of zeal because of his
12 aggressive representation of his client, I consider to be
13 the acts of Universal, and not a privileged communication.

14 There is no way in which they can be privileged,
15 and, therefore, anything relating to the sending of those I
16 think goes back to the position taken pre -- I suppose
17 there can be an argument that even if the decisions made
18 prior to the filing of this lawsuit were not cloaked with
19 good faith that the letter -- that by virtue of Fairhurst's
20 miraculous presence and laying on of hands the January
21 actions became cloaked in good faith.

22 MR. KIRBY: I am concerned that might be raised.

23 MR. FAIRCHILD: I realize that is what he is
24 flirting with, and I appreciate his dilemma.

25 THE COURT: You can't have it both ways is the

1 way I look at it. I may be wrong, but, first of all, for
2 the reasons that we have been fencing around with we don't
3 know what that advice was. For all we know, Fairhurst may
4 have said " This the dumbest letter I have ever written in
5 my life, but if I have to keep the client to write the
6 letter I'll write it."

7 We don't know what the circumstances of the
8 writing of that letter are, and I think if you started to
9 inquire -- to try to draw a line between that act, which is
10 clearly not a privileged act in itself, and the advice
11 rendered in connection with that, it seems to me you throw
12 open the the entire lawsuit, because as I recall it that
13 may have had some -- the timing of that -- well, I don't
14 recall whether the timing -- the timing of it had some
15 significance. What happened here is something happened in
16 the lawsuit.

17 MR. FAIRHURST: What happened was a summary
18 judgment motion was made by Mr. Kirby. The letter was sent
19 out January third.

20 THE COURT: The treatment of the letter is going
21 to be difficult, but I don't think the letter makes any
22 difference. When you get right down to it the position
23 taken in the letter is simply an articulation of the
24 position which had already been taken with Coleco, and I
25 guess that was really the only one prior to the time of the

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1 filing of the complaint,.

2 It is a difficult problem, but if that sheds any
3 light on anything won't it be a surprise to everyone?
4

5 MR. KIRBY: Your Honor, it does in particular --
6 your Honor is using the words of the cases when you say
7 they can't have it both ways. If I am prevented from
8 inquiring they can't turn it around and assert it as
9 evidence of good faith.

10 MR. FAIRHURST: That part is true, but there
11 is one element of this in Mr. Kirby's trial memorandum
12 submitted in March. There is an argument, albeit a brief
13 one, and I think we rejoindered to it, which has nothing to
14 do with the testimony of witnesses that we have heard so
15 far.

16 He claims that -- I believe if I understand the
17 argument that the lawsuit was maintained in bad faith in
18 some way, and I am not going to comment on the argument
19 itself. I have already done that. I think it was en
20 passant in our memorandum.

21 THE COURT: I don't think the lawsuit is
22 particularly important in this determination, quite frankly.
23 It is in there, but I don't see the lawsuit in and of
24 itself as being a particularly significant factor. It was
25 a position which Universal simply had to maintain if they
were going to maintain any credibility with respect to the

1 position they had asserted, and they were stuck. They had
2 to do it.

3 So to me the lawsuit itself isn't a critical
4 element. It would be nice if there was some authority
5 saying that framing a meritless lawsuit -- that is, a
6 lawsuit which turned out to be meritless, were actionable.
7 That would be nice.

8 MR. FAIRHURST: That would be a rather
9 remarkable departure.

10 THE COURT: Wouldn't it? It would be helpful
11 under the circumstances. Also, one of my brothers called
12 me last week and suggested that there should be a rule in
13 the District Court that no appeals to the Second Circuit
14 are permitted except by decision of the District Court,
15 which would be another rule that would be equally helpful
16 under the circumstances.

17 MR. KIRBY: Your Honor has made a ruling, and I
18 will go on and leave the subject, other than to say that I
19 to an extent agree with Mr. Fairhurst that in a sense the
20 last claim we made is a statement that under a claim based
21 on this court's inherent equitable power and Rule 11, and
22 there have been obviously in recent years developments,
23 including a recent Second Circuit decision which makes it
24 clear that the test is objective good faith, not subjective
25 good faith, and the Nemeroff case, which does use the words

1 "Maintain a lawsuit" -- that if months down the line you
2 suddenly wake up and realize that there is no basis then
3 there is an obligation upon the party and the counsel to do
4 something about it, and I'm not sure that at that point
5 there is a refuge in saying " Well, we are going to look
6 pretty idiotic to Tiger, Coleco, and everybody else, so we
7 better maintain the same position and keep that lawsuit
8 perking along in the federal court."

9 I think there is a problem there, your Honor. I
10 don't think, based on your Honor's rulings and Mr.
11 Fairhurst's positions, speaking for Universal -- I take it
12 he is, because Mr. Hadl is sitting here on the stand and I
13 suppose could raise his hand if there were a problem -- I
14 don't think it goes to the substantive or the punitive
15 damage claims. We live with what we have to live with
16 there.

17 On the attorneys' fees issue, Mr. Fairhurst in
18 his statement to the court last week on 806 said that we
19 have a counsel on counsel situation, that Townley & Updike
20 in signing the pleadings obviously not knowledgeable based
21 on Mr. Hadl's testimony in this complicated area, relied on --

22 MR. FAIRCHILD: I don't understand the last
23 remark. I totally lost that.

24 MR. KIRBY: Why don't you let me finish and
25 maybe you will understand?

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1 MR. MR. FAIRHURST: We are in oral argument now.

2 MR. KIRBY: I misstated. 804.

3 One of the elements in our defense in the
4 lawsuit, an element of defense, is that counsel relied on
5 counsel in forming the opinion or making the decision to
6 initiate suit, and my understanding of that statement when
7 made, and when I read it, is that counsel relying on
8 counsel is Townley & Updike relying on Mr. Kroft.

9 MR. FAIRHURST: Dead wrong. I saw that in the
10 transcript, too. If there is any question on that what
11 Fairhurst meant by it, if I said counsel I hardly didn't
12 mean to refer to myself. I was referring to Mr. Hadl.

13 Since I am the author of that statement I
14 disabuse you of that, Mr. Kirby.

15 MR. KIRBY: That would have been perhaps
16 helpful, because your Honor can clearly reach a decision
17 within the cases that in terms of carrying out Rule 11
18 obligations, that counsel could rely on the legitimate good
19 faith --

20 THE COURT: Here's my problem. I agree with
21 that, and I have waltzed around with the Nemeroff case from
22 time to time, and I think it is on the fringe, but I think
23 it is a healthy development.

24 On the other hand, the position does too much.
25 It would then, if one followed that to its logical

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1 conclusion, completely expose the deliberations of counsel
2 in connection with the trial. I find that is a very
3 difficult problem.

4 I understand what you are telling me. I don't
5 think that the claim in the circumstances of this lawsuit
6 is a facetious one, or one that you can just brush aside
7 and say "Oh, that's nonsense."

8 But, on the other hand, I don't know how to
9 permit you to get the evidence to establish the claim,
10 assuming there is a validity to it for the sake of
11 discussion, without breaching the attorney-client privilege.

12 I am on the horns of a dilemma, it seems. It
13 seems to me that in being practical about it I've got to
14 permit the exercise of the privilege starting at some time,
15 and then I guess thereafter bar Universal from relying on
16 the privilege as a defense, and for my purposes it seems to
17 me I have sort of settled on the retention of Townley
18 Updike being as of that moment. So that's where I am.

19 I don't know whether that makes any sense or not,
20 but I don't know how else to do it.

21 MR. FAIRHURST: It does make sense.

22 THE COURT: You don't know. You should not say
23 that. You should not say that, Mr. Fairhurst. That may
24 come back, that statement, to haunt you.

25 MR. FAIRHURST: I will qualify it. It makes

1 sense in this instance.

2 THE COURT: As long as you have limited it to
3 this very narrow scope, because you can't tell how I am
4 going to come out.

5 MR. FAIRHURST: I am not trying to hypothesize
6 how you are going to come out. I'm trying to respond to a
7 point Mr. Kirby made I have not yet responded to.

8 When he was referring to the colloquy in the
9 transcript at page 804 --

10 THE COURT: I think that has been cleared up.
11 You meant Hadl and Kroft.

12 MR. FAIRHURST: That part is true. The other
13 part I would observe is there has to be some flexibility
14 because under Rule 11 I have an obligation, quite obviously,
15 to certify the lawsuit is brought in good faith. That is
16 what he was adverting to. He wants to say Fairhurst put
17 his imprimatur on it, that Fairhurst believed it, and he
18 doesn't want that to taint over to the client in some way.
19 That is the problem I think you are getting at.

20 THE COURT: It is going to be very interesting.
21 This is a terrific case. I love this case. Except that it
22 has to be decided. If it weren't for that, it would be a
23 superb case. Marvelous lawyers, fascinating issues.
24 Everything would be perfect if it didn't have to be decided.
25 Would you like to settle the case now? I guess

1 already was involved in talking with Mr. Fairhurst. My
2 best recollection is the advice I received was that the law
3 in this area was evolving and was changing, that there was
4 some question about whether that use would support the
5 registration.

6 Q. Ms. Sifuentes or Mr. Adler told you about the
7 King Kong application that Universal had pending in
8 connection with Tiger, didn't they?

9 A. I'm confused now. What do you mean by the King
10 Kong? You mean a trademark application?

11 Q. The trademark application Universal had pending
12 for a King Kong registration. Ms. Sifuentes or Mr. Adler
13 told you about that in connection with the ongoing events
14 with Tiger, didn't they?

15 A. Oh, in connection with Tiger?

16 Q. Yes.

17 A. My best recollection is that that is correct.

18 Q. And did they tell you at that time that they had
19 conducted a trademark search for King Kong in September of
20 1981?

21 A. To the best of my recollection, no, they did not.

22 Q. Did they tell you that they had conducted a
23 trademark search for King Kong in January of 1982?

24 A. To the best of my recollection, no, they did not.

25 Q. Did you ever ask them whether Universal or MCA

1 Q. For how many years does that run?

2 A. Its present expiration would be in 1987.

3 Q. Does that basically mean you can't be fired
4 until 1987 without being paid under the employment contract?

5 A. No. I think I can be fired.

6 Q. Do you have any financial obligations
7 outstanding to MCA?

8 MR. FAIRHURST: Objection.

9 THE COURT: Overruled.

10 A. Within the last 5 months MCA is the holder of a
11 first mortgage on a property I own in California.

12 Q. What is the amount of that?

13 MR. FAIRHURST: Objection.

14 THE COURT: Overruled.

15 A. \$115,000.

16 Q. And you pay 10 percent interest on that?

17 A. That is correct.

18 Q. Mr. Hadl, you testified that sometime after this
19 lawsuit was filed, even though you had not read the
20 transcript of the RKO proceedings you became aware that Mr.
21 Kroft had argued to Judge Real that King Kong was not a
22 trademark, and that it didn't have secondary meaning, and
23 that it was diluted and part of the ordinary English
24 language. Do you remember that?

25 A. That is correct.

1 Q. Who told you that? Who told you that Mr. Kroft
2 had made that argument to a federal court in California?

3 A. To the best of my recollection, Mr. Fairhurst
4 did.

5 Q. Do you recall when he told you that?

6 A. No, I don't.

7 Q. Was it any part during the summer or fall of
8 1982, immediately after the lawsuit was filed against
9 Nintendo?

10 A. I would be speculating to say that it was during
11 that time.

12 Q. Is there anything -- can you remember the
13 circumstances in which he told you? Was it over the
14 telephone?

15 A. To the best of my recollection, yes.

16 Q. Did he tell you that he had had any meetings
17 with third parties in which that subject was raised?

18 MR. FAIRHURST: I have to pose the objection
19 again now, because I don't know exactly where he is going,
20 but I think we are again at the gates, if I may put it that
21 way.

22 THE COURT: Overruled.

23 (Continued on next page)

24

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1 BY MR. KIRBY:

2 Q. Third parties, did Mr. Fairhurst, when he was
3 telling you about what Mr. Kroft had said to Judge Real,
4 tell you that that whole question had been raised by
5 someone else, by a third-party and that he had been having
6 discussions with them about it?

7 A. I'm a little confused; that Fairhurst had been
8 requesting discussions with third parties?

9 Q. Yes.

10 A. To the best of my recollection, no.

11 Q. Did he tell you that lawyers for Nintendo had
12 visited him and pointed out what had been said by Universal
13 and its counsel and suggested that they withdraw this
14 lawsuit?

15 A. No.

16 Q. Did he ever tell you that he had had such a
17 visit?

18 A. No.

19 Q. Once you learned what Universal's position had
20 been in the RKO litigation, did you take any action, Mr.
21 Hadl?

22 A. I guess we're getting into this area again. Let
23 me see if I can answer the question this way: This matter
24 was discussed with counsel. I received advice from counsel.
25 The advice I received led me to believe that the lawsuit

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1 his deposition discovery plans he said he wanted Mr.
2 Sheinberg and Mr. Hadl and he left that open.

3 I can tell you what my present intention is,
4 again, subject to review and change. I am not frozen in
5 this. It is my present intention at the conclusion of
6 these proceedings to take Mr. Kahn's deposition testimony
7 and move for a summary judgment. Their claims are of a
8 different order than the claims of Nintendo in this lawsuit.
9 They depend on a different legal basis, albeit they are
10 arguing the same core argument now in a way on the
11 coattails of Nintendo. They basically say they were
12 economically coerced.

13 Our answer is, no, you were no not economically
14 coerced. You knew very well what you were doing.

15 I do not know what discovery plans are. I know
16 from Mr. Seltzer's letter that he makes a vague reference
17 to somehow moving things along and what he means by that is
18 up to him. I am not going to comment on it.

19 One thing I want to stress here, I would like to
20 avoid having to do -- I don't know how we would call it, if
21 the Coleco case were consolidated with this at this
22 juncture, I would have the problem of not having taken Mr.
23 Kahn's deposition. I have my two witnesses here and I
24 cannot not keep on bringing people back and forth as if
25 this were an irrelevant exercise.

RECROSS-EXAMINATION

BY MR. KIRBY:

Q. Mr. Hadl, to your knowledge, did Mr. Kroft confer with Mr. DiMuro prior to the bringing of this action against Nintendo on the subject of Universal's rights in King Kong?

A. I don't know.

Q. To your knowledge, did Mr. Kroft confer with Mr. Adler or Miss Sifuentes about the nature and extent of Universal's merchandising program for King Kong prior to the bringing of this lawsuit?

A. I don't know.

Q. Did Mr. Kroft, in words or substance, in any conversation from the time you called him and asked him to go play the Donkey Kong game and the time of the bringing of this lawsuit ever tell you that he had obtained documents or information from Universal with respect to the filing of this lawsuit?

A. I don't recall.

Q. Now, in response to some of Mr. Fairhurst's questions with respect to the Tiger license you indicated, and correct me if I am wrong, that what you were really talking about, when you got concerned about the Tiger game, was the tabletop game produced by Tiger; is that correct?

A. That's what we have before us, yes.

1 you had Mr. Rissman with you; is that correct?

2 A. That's correct.

3 Q. Did Mr. Rissman you what changes -- your best
4 recollection of whether or not Mr. Rissman told you what
5 changes he had made in the course of his Hong Kong trip;
6 yes or no, did he tell you?

7 A. I can't recall whether he told us or we saw them.
8 I mean I don't know how you differentiate.

9 Q. Well, prior to your trip to Sears Roebuck you
10 had never seen the gameplay, had you?

11 A. No. I only had these two pieces of --

12 Q. You had everything that was in Exhibit 53, right?

13 A. Yes, Exhibit 53 has a gift box and some
14 packaging for the game cartridge and it also has a diagram
15 of the tabletop game. On the game cartridge it shows a
16 diagram --

17 Q. I am not asking you what it showed. My question
18 was and the record will reflect this: You hadn't seen the
19 gameplay, had you?

20 MR. FAIRHURST: Objection, your Honor. He
21 didn't let the witness finish the statement.

22 THE COURT: Overruled.

23 Q. Do you understand the question?

24 A. I had not --

25 Q. -- seen the gameplay--

A. On a home TV screen, correct.

Q. You had not seen the gameplay prior to Mr. Rissman's return from Hong Kong of the tabletop game, had you?

A. That's correct.

Q. The first timing you saw either was after Mr. Rissman said he had made the changes; is that correct?

A. That's correct.

Q. Now, did it come to your attention at any time, Mr. Hadl, in connection with this lawsuit, that on February 16, 1983, Mr. Rissman testified under oath as follows at page 110:

"Q. Can you recall how the building outline was changed?

"A. No.

"Q. Can you recall how the horizontal bars were changed?

"A. Yes.

"Q. How were they changed?

"A. They were made horizontal.

"Q. What were they before?

"A. They were zigzag.

"Q. Were there bombs in the pre-production game?

"A. I believe no.

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1 "Q. So the introduction of the bombs into the
2 game was a change?

3 "A. Yes.

4 "Q. Were there firemen in the pre-production
5 game?

6 "A. There was a fireman without a fire hat.

7 "Q. What did the fireman look like?

8 "A. A fireman without a hat.

9 "Q. I take it that the change was to put a
10 fire hat on the fireman?

11 "A. Yes.

12 "Q. Was the gameplay changed in any manner?

13 "A. No."

14 Was that testimony by Mr. Rissman under oath in
15 February of 1983 in this litigation ever brought to your
16 attention?

17 A. To the best of my recollection, this is the
18 first time I've heard it.

19 Q. Did Mr. Rissman tell you anything different when
20 you were meeting with him and observing the game at Sears
21 Roebuck?

22 A. The answer is yes. Mr. Rissman was quite
23 excited and anxious to demonstrate to us that he had made
24 substantial changes in the game, that he had changed the --
25 I call them chutes or he calls them zigzags or the diagonal

1 lines. That was no longer the way in which you tried to
2 get up the ramps to reach the top to save the -- or
3 whatever you did once you got to the top.

4 Secondly, my best recollection is -- you just
5 said something about fire bombs and that there had been
6 barrels originally which were like the barrels in the
7 Donkey Kong game and those were changed to fire bombs.

8 At the moment, I can't recollect whether there
9 were, in fact, some other things.

10 Q. You don't recollect, Mr. Fissman telling you
11 about any other changes other than those two and the fire
12 hat on the fireman?

13 A. My best recollection is -- and I believe you
14 asked me about this -- there was something about a jump
15 button or about the way in which the character trying to
16 save or get up the ladder could jump from one space to
17 another.

18 Q. Did you point out to Mr. Rissman that the second
19 board of the Donkey Kong video arcade game was also
20 horizontal and had gaps in it; did you tell him that?

21 A. Mr. Kirby, in the testimony so far you have
22 asked me about the question of how many boards there were
23 on the Donkey Kong game.

24 To the best of my recollection, the discussion
25 we had with Mr. Pissman concerned the first board of his

3
1 gate vis-a-vis the first board of the Donkey Kong game.

2 C. Can you answer my question? My question was:
3 Did you point out to Mr. Rissman that the second board of
4 the Donkey Kong game was horizontal, not slanted or
5 zigzagged? Did you point that out to Mr. Rissman in your
6 conversations with him?

7 A. To the best of my recollection, no.

8 MR. KIRBY: I have no further questions, your
9 Honor.

10 (Witness excused)

11 MR. FAIRHURST: Your Honor, we'll call Mr.
12 Sidney Sheinberg.

13 SIDNEY JAY SHEINBERG,

14 called as a witness by the plaintiff, having
15 been duly sworn, testified as follows:

16
17 DIRECT EXAMINATION

18 BY MR. FAIRHURST:

19 C. Mr. Sheinberg, you are president and chief
20 operating officer of MCA Inc. and plaintiff Universal City
21 Studios Inc.?

22 A. Yes.

23 C. How long have you held those positions?

24 A. I have been president of MCA, Inc., since June
25 of 1973. I am not totally certain whether the head of

1 Universal City Studios is concurrent with that or not.

2 Q. To whom do you report?

3 A. I report to the chief executive officer and the
4 board of directors.

5 Q. Who is the chief executive officer?

6 A. The chief executive officer is Lou Wasserman.

7 Q. You are by education an attorney?

8 A. I am.

9 Q. Where did you go to law school?

10 A. I went to Columbia Law School.

11 Q. Did you actually practice law upon graduation
12 from law school for a period of time?

13 A. I taught for one year and then I entered the
14 corporate law department of the -- corporate law department
15 of what was then called Review Productions, which is a
16 predecessor company of Universal Television.

17 Q. What did you teach?

18 A. I taught legal ethics and legal research and
19 writing.

20 Q. Now, turning to the operations of MCA, Inc.,
21 could you briefly describe to the court the range of
22 activities undertaken by MCA and its family of companies?
23 When I refer to family of companies, I mean the grouping of
24 companies that operate under MCA and that are affiliated
25 with it in a corporate relationship.

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1 A. MCA is in the theatrical motion picture business,
2 producing and marketing domestically and through
3 affiliations with other companies internationally
4 theatrical motion pictures. Such motion picture products
5 are also marketed domestically by affiliates to pay
6 television, to video cassette markets and on free
7 television and in syndication and either through our
8 company or through relationships with joint companies
9 similar marketing of theatrical motion picture products
10 takes place outside the United States.

11 Similarly, Universal or MCA is one of the
12 largest, if not the largest, producer of television motion
13 pictures and television series which it markets around the
14 world.

15 MCA also owns MCA records, which markets records
16 and tapes and the like, cassettes, in the United States and
17 through licensees around the world.

18 MCA owns G P Putnam's Sons and the Putnam
19 Publishing Group, which publishes hardcover and paperback
20 books in the United States and Canada and licenses such
21 rights around the world.

22 MCA owns expense certify gifts, which is a chain
23 of specialty retail shops based in Atlantic City and also a
24 family of catalogues, which it operates in the United
25 States.

1 We also are in the recreational services
2 business.

3 We are a concessionnaire of the United States
4 Department of the Interior National Parks Service and
5 operate all of the concessions in Yosemite Park, Yosemite
6 national park. Similarly, we operate the Universal Studios
7 Tour located at Universal City in Los Angeles area.

8 We are also in the real estate development
9 business, primarily involving ourselves with the
10 development of the Universal city real estate and the
11 development of a piece of property in Orlando, Florida,
12 which is planned as a movie studio and theme park.

13 We are presently also in the toy business,
14 through a recent acquisition of a majority of the stock in
15 a toy company called LJN.

16 I am sure I have forgotten some things, but they
17 will come to me.

18 (Continued on next page)

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1 when the idea to form such a unit germinated?

2 A. I couldn't say it refreshes my recollection.
3 what I would say is that I would know with certainty that
4 assuming that fact as accurate that the entity was formed
5 shortly preceding such announcement.

6 Q. Okay.

7 At some point in your operational
8 responsibilities at Universal, you and Universal decided to
9 produce a King Kong picture, is that correct?

10 A. That is correct.

11 Q. Can you tell us, so we have a point off which to
12 fix your testimony, when that project surfaced in your mind?

13 A. I don't remember the year. I'm sure there has
14 been evidence as to what -- I remember the circumstances.
15 I don't remember the exact year. Possibly 1975, 1976.
16 Something in that area. I'll be glad to describe the
17 circumstances, if you wish.

18 Q. That is going to be my very next question, Mr.
19 Sheinberg. Would you tell us what the circumstances were
20 as you saw them?

21 A. Where shall I start?

22 Q. Well, why don't we start at the beginning, to
23 use Alice's term, and when we get to the end we will know
24 we are finished. But let's start with the notion of doing
25 a King Kong picture.

1 A. All right.

2 I was in New York, as fate would have had it,
3 one day when I received a phone call from a fellow who had
4 a producing arrangement with our company, and he said "I've
5 got this great idea, and I would like to develop and
6 produce a movie, a King Kong movie."

7 I instantly thought it was a great idea. We had
8 had some success, as I recollected with a large shark prior
9 thereto, and I knew that there was a history of King Kong
10 movies, and I authorized one of my colleagues in the
11 business of negotiating deals to contact the appropriate
12 people and endeavor to make an arrangement pursuant to
13 which we could acquire the requisite rights to make this
14 movie.

15 A deal was concluded, in our opinion, by this
16 person whose name was Arnold Shane with executives of RKO,
17 pursuant to which we believed we acquired the right to make
18 a movie, options to make subsequent movies, merchandising
19 rights, and the like.

20 Shortly thereafter, we found that we were in a
21 controversy, that RKO took the position that it didn't have
22 a binding agreement with us, that Dino DeLaurentis, or his
23 company, had concluded a deal with them, and that they
24 intended to -- "They" being Dino DeLaurentis -- intended to
25 proceed to make his RKO movie.

10

1 We ended up in various and sundry lawsuits
2 against various and sundry people in various and sundry
3 courts. We never made that particular script. We ended up
4 settling with Dino DeLaurentis, settling with RKO, settling
5 some lawsuits, acquiring rights from various people, and
6 that's a very short thumbnail of what can take an eternity
7 to describe, and probably incorrectly.

8 Q. To spare everyone, and Judge Sweet, we are not
9 going to take that eternity to do that. You mentioned
10 early on in the response you gave that it was your
11 intention in negotiating and doing this deal with RKO to
12 acquire sequel rights, and you used the term merchandising
13 rights, and that has become a term that we have heard
14 before in this court.

15 Did you then have an understanding, Mr.
16 Sheinberg, of what merchandising rights were? When I say
17 then I mean back in 1975 when this oral deal was struck
18 with RKO?

19 A. Yes.

20 Q. What was your then understanding?

21 A. Well, --

22 Q. Of the term "Merchandising rights." ?

23 A. My then understanding, and I am comfortable in
24 testifying about my then understanding, because I don't
25 believe my understanding has changed or ever did change,

1 pleadings?

2 A. Not that I remember.

3 Q. Were you routinely shown arguments of counsel
4 and briefs?

5 A. I don't remember being so shown.

6 Q. Did you give instructions to Mr. Kroft directly
7 as to the handling of the case and the arguments to be made?

8 A. No.

9 Q. Did you give instructions to Mr. DiMuro to in
10 turn give to Mr. Kroft as to what arguments ought to be
11 made, what documents ought to be cited, what witnesses
12 ought to be called?

13 MR. KIRBY: Objection, your Honor.

14 THE COURT: Overruled.

15 A. I want to -- maybe this is -- I hope this is
16 responsive. I was not the superhead of the law department.
17 I tried to react toward Mr. Kroft and Mr. DiMuro as a
18 client, hopefully a little more sophisticated than some
19 client who had never ever gone to law school, but
20 nevertheless as a client, and I didn't supervise the legal
21 process of the lawsuit.

22 Q. At some point that lawsuit, in all its many and
23 varied facets, terminated. Do you have an understanding
24 today as to what the substantive terms of that termination
25 were?

A. I have an understanding, yes.

Q. Would you tell us what your understanding of it is?

A. Well, the lawsuit with respect to Dino DeLaurentis was settled. It was settled based on the fact that we would refrain from proceeding with our project and a quid pro quo would be that we would receive a participation in his project. There were certain specific terms during which we would, as it were, hold back what we asserted as our rights to make another King Kong movie.

As far as RKO was concerned, my recollection is that during the course of that proceeding there was a third party involved who I think were the successors in interest to the rights of Marion Cooper. I don't know whether it was an estate or heirs, somebody representing the Cooner interest.

We acquired from the Cooper interest, if I recollect properly, all of the rights that the Cooper interest might have in the property King Kong, with the exception of publication rights, which I know they were very anxious to keep, and there may have been other more limited exceptions but we specifically acquired what we considered to be merchandising rights, if they had them.

As far as the case is concerned involving our complaint and a counter complaint filed against us, on the

1 one hand the court held that something was in the public
2 domain -- I say something because it got extraordinarily
3 complicated as to what came first, a book or the RKO film --
4 and a court also held in a counterclaim against us where we
5 were charged with copyright infringement and some other
6 kind of violations I don't remember, the court held that we
7 had a valid contract with RKO, and, hence -- and that
8 became a very important piece of business as far as we were
9 concerned.

10 Subsequently, in the state court action, if I
11 remember properly, where we had initially sued RKO for
12 breach of contract, and specific performance, and the like,
13 that agreement was settled with RKO, again under the
14 guidance and rather stern hand of a Judge McCluskey, and I
15 am not clear what happened with that. I know that I
16 participated primarily in an ancillary agreement, which
17 agreement basically involved our dropping, as I recollect
18 it, or our settling our complaint against RKO for breach of
19 contract, and RKO agreeing to co-finance with Universal a
20 group of theatrical motion pictures.

21 That's my best memory as to what happened.

22 Q. You mentioned that there were claims by RKO
23 against Universal, and you have mentioned copyright
24 infringement. Do you have knowledge of what the other
25 claims were today?

1 A. Yes. I can't characterize them in terms of
2 legal characterization, but I remember two things.

3 Thing 1: We had taken out an ad indicating that
4 we were making our version of King Kong, and it seems to me
5 one of the things that RKO claimed in a counterclaim was
6 that somehow caused them grievous injury.

7 The copyright claim was that Mr. Goldman had
8 seen the picture and that he had even made notes, the
9 picture being the RKO picture, and that he had made notes
10 in the projection room as to dialogue in the picture, and
11 that that constituted copying.

12 Those are the only two specifics I can remember.

13 Q. Do you have knowledge today, as you are sitting
14 here testifying, Mr. Sheinberg, as to whether Dino
15 DeLaurentis made any claims against Universal in response
16 to the complaint that Universal filed against Dino
17 DeLaurentis?

18 A. Made any counterclaims?

19 Q. That's correct.

20 A. I don't remember. I know that Mr. DeLaurentis
21 was extraordinarily upset because the people who filed the
22 claim apparently used a form of pleading that used the word
23 "Fraud" in it, and Mr. DeLaurentis had this complaint
24 translated into Italian, so he would understand it, and
25 when he read it he was absolutely outraged that that was in

1 there, and I remember this incident because I called up our
2 lawyers and I said "Must we really charge him with fraud"
3 and I was given a lesson as to why fraud was in the
4 complaint, but the bottom line is we dropped the word "Fraud"
5 from the complaint. That's the only thing I can remember
6 about Mr. DeLaurentis.

7 Q. When you said you called your lawyers, you
8 called Mr. Kroft and his associates?

9 A. I called Mr. Kroft and said Mr. DeLaurentis is
10 extraordinarily upset, not because we are suing him,
11 because he understands we have to sue him, but apparently
12 your complaint claims he did various and sundry things and
13 it uses the word fraud or fraudulently, and that upset Mr.
14 DeLaurentis terribly, and I said "Do we really have to
15 accuse him of fraud? "

16 Q. At some point, Mr. Sheinberg, did you receive
17 reports from -- I'm going to use this in the broadest sense --
18 anyone, Mr. Kroft, Mr. DiMuro, whoever -- as to the nature
19 of the claim made by RKO over the poster and what
20 Universal's defense to that claim was?

21 A. I may have. I don't remember. I always thought
22 it was not seriously made, and I don't know that I ever
23 paid that much attention to it, but I may very well have
24 been alerted to it. I have no memory of it.

25 Q. Do you have a recollection of ever actually

AFTERNOON SESSION

2:00 P.M.

SIDNEY JAY SHEINBERG, resumed.

BY MR. FAIRHURST:

Q. With reference to Plaintiff's Exhibit 3 which is in front of you, the memo Mr. DiMuro wrote you on June 18, 1980, paragraph three has a note with reference to Paramount's merchandising rights in the name and character King Kong. When you received this memo from Mr. DiMuro, did you have contemporaneous knowledge of their then being an outstanding King Kong merchandising licensing program?

A. Yes. I was aware of the fact that we had in the settlement agreement with Dino DiLaurentis, because I did participate in that negotiation with Mr. DiMuro. I was aware of the fact that we had agreed to not make your movie and to permit them to get the benefit of what they thought their bargain was for X period of years and I knew that Paramount Pictures Corporation was, in fact, the distributor of the picture and was handling the ancillary merchandising rights.

Now, I could not in honesty testify that I knew what they were doing. I knew they were the possessor of the rights and handling the rights.

Q. Subsequent to June 18, 1980 when you received this memorandum, did you acquire knowledge in the course of

1 your operational responsibilities of any projects that
2 Universal itself had underway with respect to exploiting
3 rights in King Kong?

4 MR. KIRBY: Asked and answered, your Honor.

5 THE COURT: Overruled.

6 A. I indicated earlier, I guess before the lunch
7 break, that my present recollection is that subsequent to
8 this date we had expended a considerable amount of monies
9 in connection with the development of a tour attraction
10 that we contemplated would be done in either Los Angeles or
11 in Florida or both and based upon "the property King Kong."
12 I know -- knew that there were a variety of conversations
13 that had taken place over the years in connection with the
14 production of a sequel or a King Kong movie and I had had
15 such conversations specifically with Jennings Lang, who was
16 preparing this project.

17 Q. Was he a producer?

18 A. Jennings Lang was a producer who had an
19 independent production company under exclusive contract to
20 Universal and was a very, very long time MCA executive and
21 person with whom I had personally worked for a number of
22 years and held him in very high regard.

23 Q. You mentioned the development work on a tour
24 attraction.

25 How did that come to your attention?

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1 A. I don't recall exactly when, but at a given
2 point the recreational services people had meetings with me
3 and indicated to me that they were interested in doing this
4 large, what they thought, very highly exploitable
5 attraction.

6 And in point of fact a considerable amount of
7 monies were spent in developing prototypes because it
8 raised some questions that had never been confronted by us
9 before, such as can you have hair that lasts actually long
10 enough to actually use in an attraction.

11 I wouldn't be surprised that we spent somewhere
12 between a half million dollars and a million dollars. We
13 actually built a head of an ape. We designed the
14 attraction and we had intended to actually open that
15 attraction, as I recollect, a year or two ago.

16 Q. Where does the project stand today?

17 A. We didn't get the cost of the project for
18 California down to where we hoped we could and particularly
19 at a point where the tour business seemed to be suffering a
20 bit and we have continued to hold the project in mind as a
21 project that we would do either in Florida, initially, or
22 in California or both. We still regard this project as
23 probably the best project we've got.

24 Q. In conjunction with that project, by which I
25 mean the possibility of having the King Kong tour, did you

1 realities that over a period of time evolved. The
2 realities were that Mr. DiMuro -- and I don't remember when --
3 ceased to be the head of the law department and became a
4 consultant, which meant that he wasn't quite as present in
5 mind and body and spirit to all of us and I think the other
6 side of the coin is that I would probably emphasize myself
7 Mr. DiMuro -- I'm sorry -- Mr. Kroft because I had lived
8 through all of these wars with Mr. Kroft, who was our
9 outside counsel on this matter.

10 In a similar fashion, if somebody were to ask me
11 tomorrow, I would probably include your name on the list.

12 Q. You mentioned this project that Jennings Lang
13 had discussed with you or a King Kong motion picture. What
14 became of that project?

15 A. Well, two things became of the project. Thing
16 one, although we had hired an extraordinarily expensive
17 writer and had committed hundreds of thousands of dollars
18 to commission the script. I felt, when the script was
19 shown to me, that the script was very disappointing.

20 Thing two, Mr. Lang suffered a most severe heart
21 attack, the result of which is that he is totally
22 incapacitated and cannot speak and the combination of those
23 two things kind of stopped that project. I should add that
24 during that period of time and I am not sure when that
25 period of time starts, as I indicated earlier, there were

also conversations with Mr. DiLaurentiis, who was also interested in doing another King Kong and Mr. DiLaurentiis was interested in our discussing -- in discussing with us our coproducing it with him.

I think there was a point when Mr. DiLaurentiis prepared a treatment, which I believed we financed, on King Kong in Russia, because Mr. DiLaurentiis got it into his head that that's where he wanted to do it probably only because it was so difficult to do it there. Mr.

DiLaurentiis is attracted to projects that are hard to do.

Later Mr. DiLaurentiis again approached us about making some form of arrangement with him and to the best of my knowledge there presently exists an arrangement with Mr. DiLaurentiis licensing Mr. DiLaurentiis -- and I don't intend to testify as to precisely what is being licensed to Mr. DiLaurentiis -- some arrangement with Mr. DiLaurentiis with regard to King Kong.

Q. This is of a more recent origin?

A. This is I would say of a contemporaneous origin.

Q. Back to the Jennings Lang project.

Did you have occasion, in conjunction with that project, to seek legal advice from Mr. DiMuro about it? Let me see if I can refresh your recollection, Mr. Sheinberg, by putting in front of you what has been denoted here as Defendant's Exhibit Number 89.

1 A. As I indicated earlier, whenever I had occasion
2 to speak with anyone on anything involving King Kong,
3 including Mr. Lang, I would always make inquire as to the
4 status of the rights and insist that the people I deal with
5 do likewise.

6 This particular memo to me from Mr. DiMuro went
7 to I think two questions really. Question number 1: What
8 situation did we have vis-a-vis RKO, because I had
9 remembered that under certain conditions we were committed
10 to get the permission of Mr. DiLaurentiis before proceeding
11 with a specified type of King Kong.

12 If I may clarify that, because I don't know what
13 your record has, if anything, on that. The reason for that
14 was that RKO was concerned, when we made the original
15 settlement agreement, that they might be subject to a
16 lawsuit by Mr. DiLaurentiis, who claimed that RKO had
17 reneged on them because RKO had orally promised to grant
18 them options.

19 RKO had orally promised to grant DiLaurentiis
20 options for further sequels.

21 So they wanted to be sure -- they, RKO, wanted
22 to be sure -- that they were not subjected yet to another
23 lawsuit from Mr. DiLaurentiis.

24 C. RKO's capacity to grant Mr. DiLaurentiis that
25 option was frustrated, if you will, by the resolution of

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1 the Universal agreement, with respect to for the Universal
2 agreement, was made impossible because of the Universal
3 litigation; is that what you were referring to?

4 MR. KIRBY: Objection.

5 THE COURT: Sustained.

6 MR. FAIRHURST: Strike that question.

7 A. In any event, the --

8 MR. KIRBY: There's no question pending, your
9 honor.

10 A. There's an answer pending.

11 MR. FAIRHURST: His Honor sustained the
12 objection of Mr. Kirby to my question.

13 A. I had not finished.

14 MR. KIRBY: That does raise the continuing
15 problem. Certainly I can understand some purpose for a
16 narrative answer. A narrative answer that takes off on a
17 narrow question and goes for many minutes does not afford
18 us the opportunity to interpose proper objections and I
19 wonder in your Honor would instruct the witness to respond
20 to the question asked so that we can proceed with an
21 orderly fashion.

22 MR. FAIRHURST: I think Mr. Sheinberg was
23 responding to the question I put him and what I think he is
24 suggesting that I may have prematurely cut his answer off.

25 THE COURT: That's the way I view it.

1 Q. Mr. Sheinberg.

2 A. I said the purpose of this memo to me, as I
3 understand this memo, was to answer two questions. One I
4 have spoken to, namely, what situation did we have
5 vis-a-vis RKO as it might relate to Mr. DiLaurentiis'
6 consent being required.

7 Question number 2, assuming we have the
8 requisite rights, how should we go about doing.

9 Mr. DiMuro sets forth a kind of a set of
10 guidelines which represents his view as to how we ought go
11 forward.

12 Q. To your knowledge, Mr. Sheinberg, were these
13 guidelines implemented in the sense that someone actually
14 sat down and did a draft of the screenplay and subsequently
15 went into production with these guidelines in mind?

16 MR. KIRBY: Objection, your honor.

17 THE COURT: Sustained.

18 Q. Do you know what became of the guidelines, now
19 they were used?

20 A. All I know is that I was told by Mr. Lang, when
21 he was working on the project and I was told by Mr. Jay
22 Stein and others who worked with him, at any point that
23 someone would show me or talk to me about King Kong, I
24 would say you've gotten together with Joe DiMuro or you've
25 gotten together with Steve Kroft. Yes, I have, is

1 instruction, I have his guideline, I'm not sure it was
2 instruction or guideline. Yes, we are being careful.

3 Q. Did there come a time, Mr. Sheinberg, when you
4 learned of the existence of video arcade game called Donkey
5 Kong?

6 A. Yes, I am sure there did come such a time.

7 Q. Can you tell us when that time came?

8 A. No.

9 Q. Well, did there come a time when you had a
10 meeting with representatives of Coleco in late April --
11 strike that the question.

12 Did there come a time when you had a meeting
13 with someone from Coleco in which the subject of Donkey
14 Kong arose?

15 A. Yes.

16 Q. In relation to that meeting, irrespective of
17 when it occurred, was your knowledge of the existence of
18 Donkey Kong prior to that or subsequent to or
19 contemporaneous with?

20 A. There's no question but that my knowledge of
21 Donkey Kong, as an arcade game, preceded the meeting with
22 Coleco, which was a lunch, as I recollect.

23 Q. Okay. We all know, from being here for the last
24 week, that that lunch was on April 27th. So if you use
25 that as a guide, if you will, in conjunction with the

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1 Q. Do you recall what Mr. Hadl reported back to you
2 after you had asked him to look into it with this snippet?

3 A. Mr. Hadl in substance reported back to me that
4 he had had conversations with Steve Croft, I believe, on
5 the subject, maybe DeMuro but I don't remember DeMuro.

6 Their investigation led them to the conclusion
7 that we had a cause of action or possible variety of causes
8 of action in connection with Nintendo's arcade game.

9 Q. Do you remember, Mr. Sheinberg, what it was
10 specifically Mr. Hadl reported to you about these potential
11 causes of action or variety of causes of action?

12 A. Well, as I think I testified in my deposition, I
13 knew that generally we were talking about violations of
14 what we considered to be literary rights of one sort or
15 other.

16 I don't believe that I ever inquired, and I
17 don't believe he ever told me in any detail, and if he did
18 I am not sure that I would have understood, you know, with
19 great specificity, what these allegations would be.

20 It was enough for me to know that Mr. Hadl, who is a
21 lawyer, has an extensive background of knowledge in all
22 kind of copyright and trademark type areas, at least I
23 thought he did, Mr. Hadl had looked into it and advised me
24 that we had the rights.

25 The one subject that I remember more than any

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1 other subject, frankly, was where would we file the lawsuit
2 if we ever were to get to that point.

3 Q. Do you remember a discussion on that?
4 A. Yes, I do.

5 Q. With whom?

6 A. With Mr. Hadl.

7 Q. What can you tell us about that discussion?

8 A. Well, when that discussion later took place,
9 which I think was some weeks or later, a decision was made
10 not to file the case in California because the situation in
11 California seemed to be such that it takes years and years
12 and years to ever get to trial, and a decision was made
13 that the case should be filed, assuming it was appropriate,
14 in New York, because the calendars were such that we could
15 get to court earlier.

16 Q. Did you yourself, Mr. Sheinberg, specify who
17 should be handling the case in New York?

18 A. I did not.

19 Q. Were you subsequently told how the case was
20 going to be handled in New York, by which I mean who was
21 going to be retained to handle it?

22 A. Your name or the name of your firm may have been
23 mentioned. To the best of my knowledge I had never met you
24 nor did I know who you were.

25 Q. Did Mr. Croft and you have any discussion as to

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1 where the case ought to be brought and when it ought to be
2 brought?

3 A. I don't think so. It's possible, but my
4 recollection is that to the degree I discussed this with
5 anyone, it was Bob Hadl.

6 Q. And did Mr. Hadl -- excuse me.

7 A. I don'te want to abuse my answer, counsel, but I
8 think it's important to note that Mr. Hadl had the specific
9 responsibility of being the management liaison with outside
10 counsel.

11 Q. Did Mr. Hadl advise you as to Mr. Croft's and
12 his view of Universal's potential claims in writing?

13 A. No.

14 Q. After receiving this advice from Mr. Hadl, did
15 you specifically commission him to do anything?

16 A. My recollection is that the ultimate decision to
17 file a lawsuit took place after a meeting that was held
18 with two representatives -- well, are we now talking about
19 the lawsuit or are we talking about a wire?

20 Q. No, the lawsuit.

21 A. The lawsuit, as I recollect the decision to file
22 the lawsuit was made, if I am right, subsequent to a
23 meeting that took place with two representatives from
24 Nintendo.

25 Q. Do you remember who those representatives were?

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1 A. No. I believe that one of them was a relative
2 or somehow related to the Japanese person who I understood
3 owned or controlled Nintendo, and the other was a lawyer
4 who was officed in Seattle or Portland or some place in the
5 Pacific Northwest, and I believe was a kind of a general
6 counsel to Nintendo, but not one of great authority, as it
7 appeared to me.

8 Q. This was a luncheon meeting?

9 A. Yes.

10 Q. And do you recall what transpired at this
11 luncheon?

12 A. What transpired at this luncheon generally was
13 that we told them that we were of the opinion that we had
14 rights that had been violated. It was certainly not a
15 meeting that had to do with the details that one might have
16 in an argument among lawyers, and we indicated to them that
17 we were most willing to sit down and work out something
18 even if it didn't directly relate to this particular
19 project in the sense that we wanted to be reasonable.

20 Q. What was the upshot of the meeting?

21 A. The upshot of the meeting from my perspective
22 was that we were really wasting our time, and that all that
23 would happen is that more time would pass and someone would
24 later tell us, as we were indeed told in the Sony
25 litigation, that we had rested on our rights too long or

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1 something of that sort, and I concluded that we ought
2 proceed and file a lawsuit.

3 Q. Do you remember at that luncheon, Mr. Sheinberg,
4 speaking to Mr. Howard Lincoln, the general counsel to whom
5 you referred, about the Tiger arrangement?

6 A. I do not.

7 Q. Going back to the report that Mr. Hadl gave you
8 after he had consulted with Mr. Croft and saw the game --

9 A. Mr. Hadl told me he played the game also. I
10 remember that.

11 Q. Going back to that sequence of events, did there
12 come a time when you subsequently met with representative
13 of a company called Coleco?

14 A. Yes.

15 Q. What was the occasion for that meeting?

16 A. I would say the occasion for that meeting was
17 two-fold:

18 No. 1, the person who was the general sales
19 manager or whatever his title was, Steve Adler, who ran the
20 day-to-day operation of Merchandising Corporation of
21 America, which is our merchandising affiliate, had kind of
22 been after me to sit down with Mr. Greenberg, because he
23 thought that we might want to discuss an arrangement that
24 would constitute a kind of broad license of Universal
25 controlled properties with Mr. Greenberg, whom he thought

1 had a company that was going to be a real comer in the
2 video game field.

3 Secondarily, I think we felt, Mr. Wasserman and
4 I, that there may be an opportunity for an involvement with
5 Mr. Greenberg in one sense or other in the sense of our
6 acquiring an interest in his company or maybe acquiring the
7 company, etc., again bearing in mind that at that time
8 video game companies were the hottest thing in America,
9 Atari included.

10 And so I would say the meeting was really in the
11 nature of a broad-based good and welfare meeting which
12 might lend itself to some form of licensing arrangement of
13 a broad sort or might even lend itself into some form of
14 investment or acquisition of Coleco.

15 Q. Do you recall who was actually at this luncheon
16 meeting beside yourself

17 A. I was at the meeting, Lou Wasserman was at the
18 meeting, Arnold Greenberg was at the meeting, and although
19 I had previously said that Bob Hadl was at the meeting,
20 that is incorrect. In point of fact, he was not. Steve
21 Adler was at the meeting.

22 Q. As best as you can recall, Mr. Sheinberg, what
23 occurred at that meeting with the Coleco representatives?

24 A. Representative.

25 Q. Representative.

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1 A. I think there was only one.

2 Q. Mr. Greenberg.

3 A. What happened was that it was a very nice lunch.
4 Mr. Greenberg told us a bit about the formation of his
5 company by his father, which was original originally in the
6 house-shoemaking making business or something. He and Mr.
7 Wasserman both shared the friendship of Senator Ribicoff,
8 and he told us about what their company was doing and he
9 was very excited about this new product that they were
10 bringing out on the market, which was going to be in the
11 video game business, and at some point in the conversation
12 Donkey Kong came up.

13 Q. Who raised it?

14 A. It is my belief that it just came up in the
15 conversation mentioned by Mr. Greenberg.

16 In reviewing the files, I know that there is an
17 indication that I received a memo that indicates I should
18 have known it. I don't remember remembering it, and I
19 don't remember raising it.

20 And the reason I have this strange memory on
21 this subject is that when the subject of Donkey Kong came
22 up, and as I say it's my recollection that he mentioned
23 that they they had this hot property that they were going
24 to market with their Colecovision product, I brought up the
25 subject of, gee, that creates a problem for us because we

1 have some real concerns with Nintendo, and we believe that
2 some rights of ours are being violated, and we had done a
3 lot of legal research in this, etc.

4 And I wouldn't want us to -- you know here we
5 are talking about a broad license, or we are talking about
6 an acquisition of your company or debentures or whatever. I
7 won't want us to have an adverse relationship in this
8 situation.

9 Q. What did Mr. Greenberg say to you?

10 A. Mr. Greenberg said to me, and he smiled as he
11 said it, he said, "What took you so long? "

12 Q. What did you understand him to mean?

13 A. I remembered that because that is a famous movie
14 line, you know, where the hero rides off into the sunset
15 and then somebody always comes running after him, and the
16 hero turns around and he looks at the guy or the woman,
17 always John Wayne or Gary Cooper or somebody, says, "What
18 took you so long," and you do a fadeout. That line I
19 remembered.

20 In any event, it was a very non-hostile,
21 non-argumentative, pleasant lunch. He said, "Look, who
22 handles these things for you, and have him get in touch
23 with my man," Schwefel I think was the man's name.

24 He said, "Mr. Schwefel is --" I don't know
25 whether he was general counsel or business affairs type but

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1 he was a senior guy in the Coleco organization, and it was
2 left that Mr. Hadl would get in touch with Mr. Schwelfel
3 and these guys were going to try to work this thing out in
4 a manner that would be to everybody's satisfaction.

5 Q. You subsequently reported all this to Mr. Hadl?

6 A. I subsequently reported to it Mr. Hadl.

7 Q. What did you tell him to do with respect to Mr.
8 Schwelfel to start with?

9 A. I told him to get in touch with Mr. Schwelfel.
10 I told him to explain the situation to Mr. Schwelfel, and I
11 told him very pointedly, "I said, I am not looking for any
12 war here. Let's see whether we can't get this thing worked
13 out so that Mr. Greenberg is happy with it, and that we can
14 live with it."

15 Q. Do you recall what happened after lunch with Mr.
16 Greenberg?

17 A. Yes. Two things that I remember happened.
18 Thing one is we showed Mr. Greenberg one of our toys that
19 we had been working on, which had to do with an interactive
20 video disk product, which he seemed quite impressed by.

21 And No. 2, he showed us some of the toys that he
22 had brought along that related to the Colecovision product.

23 Q. Do you recall whether he showed you any film?

24 A. He showed us a number of commercials.

25 MR. FAIRHURST: Your Honor, at this point I

1 would like to ask Mr. Sheinberg to look at the screen and
2 we will ask -- this has been marked and accepted in
3 evidence as plaintiff's Exhibit 104 -- and ask Mr.
4 Sheinberg after seeing it whether he can identify it for us.

5 (Videotape played)

6 Q. Mr. Sheinberg, is that the ad that Mr. Greenberg
7 showed you?

8 A. It either is or it's similar to one of the
9 things he showed us. I think he showed us more than one.

10 Q. Do you recall whether you gave Mr. Hadl any
11 specific instructions as to what the form of this
12 resolution of the issue between Coleco and Universal should
13 be? In other words, how to resolve it, what the structure
14 of an agreement might be?

15 A. I don't think so other than that as I testified
16 to earlier.

17 Q. Do you recall learning at some subsequent time
18 that the claim against Coleco had been resolved?

19 A. Yes.

20 Q. How did you learn that?

21 A. Well, I am sure Mr. Hadl told me --

22 Q. No, no. How did you learn it? Don't "I am sure."
23 Who reported to you on it?

24 A. Mr. Hadl.

25 Q. Do you as you sit here today know the essential

1 or now, and that this might create some problems or it
2 might not relative to our contract with Coleco, and I think
3 I said something like, "Well, handle it somehow. Work it
4 out."

5 Q. Was that pretty much the sum and substance of
6 your involvement with the Tiger license?

7 A. Yes, other than once I think being told it had
8 been worked out, I don't think I heard about Tiger until
9 this lawsuit.

10 Q. Incidentally, when Mr. Greenberg turned to you
11 and said, "What took you so long," what did you understand
12 him to mean?

13 A. I understood him to mean that he, Mr. Greenberg,
14 being a graduate of the Harvard Law School and highly
15 regarded, was aware of the fact that there were problems or
16 there might be problems between King Kong and Donkey Kong,
17 and that he, Mr. Greenberg, had anticipated hearing from us.

18 Q. As a consequence of that meeting with Mr.
19 Greenberg, did you issue instructions to Mr. Hadl with
20 respect to bringing a lawsuit against Coleco or advising
21 him of Universal's claim of rights?

22 A. Well, I think I testified to that if I
23 understand your question. I told Mr. Hadl to get in touch
24 with this name I had been given called Mr. Schwelfel, I
25 think, and he did, and I emphasized, because I do remember

1 this this, I was very anxious to keep a very good
2 relationship with Mr. Greenberg. I didn't want to have a
3 fight with Mr. Greenberg, and Mr. Greenberg didn't want to
4 have a fight with us, because we knew we were moving toward
5 other possible relationships, which in fact we did.

6 THE COURT: What were those?

7 THE WITNESS: Subsequent thereto, we had a
8 meeting with Mr. Greenberg in the offices of Lazard Freres
9 here in New York which contemplated from Mr. Greenberg's
10 standpoint at least that we make an investment in
11 convertible debentures of Coleco which would have permitted
12 him to get some funding that he needed and would have
13 permitted us to participate in the growth of Colecovision.

14 THE COURT: Did you do it?

15 THE WITNESS: We did not do it. I hasten to add,
16 notwithstanding my personal recommendation that we do it.

17 Q. You became aware, did you not, that a telex had
18 been prepared by someone to put Coleco and Nintendo on
19 notice of Universal's claims?

20 A. I am aware that a telex was prepared to put
21 Nintendo on notice and that a copy went to Coleco.

22 Q. I am going to put in front of you what's been
23 denoted as plaintiff's Exhibit 14, and ask you to review
24 that document, Mr. Sheinberg.

25 A. Well, I know I saw this document.

1 others for these kinds of details.

2 Q. I gather it's a pretty big company you are
3 running out there, Mr. Sheinberg?

4 A. It's a big company with lots of legal
5 involvements.

6 Q. What were your revenues last year?

7 A. In excess of a billion dollars.

8 Q. What were your earnings last year?

9 A. Well, if you are going to ask me some detailed
10 information, I would like to get our annual report so I
11 don't end up misquoting myself. You have our annual report?

12 Q. I have your 10 K. Would that help you?

13 A. I am sure it would.

14 Q. Let me see, Mr. Sheinberg, if we can get to the
15 summary page that might help refresh your recollection.
16 Let's make it clear on the record that that's necessary.
17 You can't recall what your operating revenues for last year
18 were?

19 A. By operating revenues, you are talking about net
20 earnings.

21 Q. What was your operating income for 1984?

22 A. Our operating income for 1984.

23 (Pause)

24 A I think our profits were around \$135 million.
25 Is that close?

1 Q. Well, why don't you look at page 3 of the
2 exhibit to your 10 K at the top left hand column?

3 A. This is illegible.

4 Q. I'll read it to you, if you want me to, Mr.
5 Sheinberg. That was the best copy that the New York Stock
6 Exchange could supply us. I apologize?

7 A. Net income was \$95 million.

8 Q. Does it state what your total earnings were?

9 A. That is our total earnings.

10 Q. What were your total sales?

11 A. I multiplied by the wrong figure. That's why I
12 was wrong.

13 A 1.6 billion.

14 Q. Thank you. What portion of your total operating
15 income was contributed by your litigation profit center?

16 A. By our litigation profit center?

17 Q. Yes.

18 A. I don't know. Why don't you refresh my
19 recollection in our annual report or the 10 K because I
20 don't know that.

21 Q. Do you have a line item for your litigation
22 profit center?

23 A. No.

24 Q. Do you have any idea of what the net result in
25 terms of income from litigation was for Universal or MCA

1 during 1984?

2 A. I don't know that it was a profit center at all.
3 It may have been a loss center.

4 Q. What about 1983, was it a profit center in 1983?

5 A. I don't remember.

6 Q. What about 1982?

7 A. I don't remember. I have never seen us put
8 together any kind of study that would give me that
9 information to know.

10 Q. By the way, Mr. Sheinberg, I have been reading
11 about you. What was your total compensation for 1984 from
12 Universal/NCA?

13 A. My total compensation from MCA was \$500,00 in
14 cash plus 4 million something in vested long term stock.

15 Q. So was business week accurate in reporting on
16 May 6 1985, that your total compensation, adding those
17 figures together was \$4,638,000?

18 A. It depends how you want to look at it.

19 Q. If they are not accurate you can just tell me
20 they were not accurate?

21 A. I would prefer not to tell you anything. Make
22 your own conclusion.

23 Q. The point is you are in court.

24 MR. FAIRHURST: Now, we are getting argument
25 with the witness. This is amusing and all. What real

1 responsible for the tour attractions?

2 A. Jay Stein is the president of something called
3 MCA Recreation. That is the group that is responsible for
4 Yosemite, our Universal Studios tour, the Florida tour
5 attraction,, and prior to our disposing of it he was
6 responsible for Arlington National Cemetery and the tour in
7 Washington, D. C., that we operated.

8 Q. Now, my notes reflect, Mr. Sheinberg, that on
9 direct you said that with respect to Mr. Lang and with Mr.
10 Stein, that there is one thing you could be very
11 comfortable with testifying, and that is that you told them
12 to consult with someone. Whenever someone says King Kong,
13 I said talk to Joe DiMuro, talk to Steve Croft, be sure you
14 have the rights we are talking about, be sure we don't
15 infringe on anyone else's rights.

16 Is that the substance of your testimony?

17 A. That's absolutely the substance.

18 Q. Thank you. As you sit here today, Mr. Sheinberg,
19 are you sure that you told Mr. Lang and Mr. Stein to
20 consult with Steve Croft?

21 A. Yes. I said Steve Croft or Joe DiMuro.

22 Q. You are sure you included Steve Croft?

23 A. No.

24 Q. You are not sure?

25 A. No. I believe I testified either Steve Croft or

1 Joe DiMuro.

2 Q. You are sure that in words or substance you
3 told Mr. Lang and Mr. Stein to consult with either Joe
4 DiMuro on Steve Croft?

5 A. Yes, beyond a shadow of a doubt.

6 Q. And did you give them the option as to which one
7 they were to choose?

8 A. I didn't think it was as much an option but I
9 guess you could characterize it that way. I consider those
10 two people now aided by Mr. Fairhurst as the three lawyers
11 most knowledgeable in the world of King Kong.

12 Q.. Mr. Sheinberg, and I am referring to page 84 of
13 your deposition, do you recall being asked the following
14 questions and giving the following answers beginning at
15 line 10:

16 "Q. Now, as for Mr. Stein, did you tell him
17 any specific thing to avoid in constructing the studio tour
18 exhibit?

19 "A. I don't remember having so done.

20 "Q. Did you tell him that the ape should look
21 in a certain way rather than another way?

22 "A. No. I simply -- I want to tell you what I
23 told them because I am very comfortable with it. I told
24 them to get legal advice. That's what I told them to get,
25 so that we didn't depict the ape or anything else that

1 might be protectible.

2 "Q. As far as anything else, did you advise him
3 as to the anything else which might be protectible in
4 connection with the production?

5 "A. To the best of my knowledge, I neither
6 advised Mr. Stein nor Mr. Lang beyond the giving him of a
7 specific name as to who they should consult.

8 "Q. Who did you tell them to consult?

9 "A. Joe DiMuro.

10 "Q. And the rights, to make sure that we have
11 this, that you were asking him to ascertain that they not
12 infringe in any way, would be the rights held by RKO and
13 the rights held by Dino DiLaurentiis?

14 "A. Yes. I had previously testified that I
15 didn't know whether I said to be sure and talk to Joe
16 DiMuro about the rights held by RKO and DiLaurentiis or
17 whether I said call Joe DiMuro and be sure that whatever
18 you are doing doesn't create a problem for us with regard
19 to the rights in the property King Kong.

20 "I don't know whether I stated it in a
21 cautionary way or affirmatively. I felt that I discharged
22 my duties and I was very comfortable by saying, 'Get Joe
23 DiMuro in the act.'"

24 Do you recall being asked those questions and
25 giving those answers at your deposition?

1 A. Yes.

2 Q. Thank you. Now, with respect to Mr. DiMuro, Mr.
3 Sheinberg, do you recall today whether the April 8 memo was
4 a memo that he prepared at your request or that he just
5 popped up and prepared it?

6 A. I can only recall, based upon what the memo says,
7 the memo on its face says it's at my request, if I remember
8 that properly.

9 Q. All right. Now, you don't have that in front of
10 you, I don't think, Mr. Sheinberg. Let me put defendant's
11 Exhibit 89 in evidence in front of you. This was written
12 on April 8, 1982.

13 Was this written in connection with the Jennings
14 Lang movie?

15 A. I cannot testify that I remember that. I
16 believe that, but I don't remember that.

17 Q. Did Universal on April 8, 1982 have any other
18 King Kong movie under active consideration other than the
19 Jennings Lang movie?

20 A. Well, as I said earlier, I can't lock in the
21 time frame, but the only other King Kong movie with which I
22 have familiarity, and again you must understand I am not
23 only not head of the law department, I am not head of the
24 merchandising department, I am also not head of the movie
25 department, so I am only testifying about what I know about.

1 The only other possible movie that could have
2 been involved would have involved Dino DiLaurentiis.

3 Now, the reason I can imply with reasonable
4 certainty that it had to do with one of these movies is
5 that another recipient of this is Mel Sattler and Mel
6 Sattler is in charge of business affairs for the motion
7 picture group. He would only be copied if it were somehow
8 relevant to a movie.

9 A. Did you read this memorandum?

10 A. This memorandum?

11 Q. Yes.

12 A. Yes.

13 Q. And you read the guidelines?

14 A. Yes.

15 Q. And did you call Mr. DiMuro to discuss either
16 the memorandum or the guidelines?

17 A. No.

18 Q. Did you call Mr. Croft to discuss the memorandum
19 or the guidelines?

20 A. No.

21 Q. Did you discuss this memorandum with anyone at
22 Universal-MCA, to the best of your recollection today?

23 A. No.

24 Q. April 8, 1982 was approximately three weeks
25 prior to the time that you met with the representatives of

1 tell me, did Mr. Adler furnish you that prior to the
2 meeting?

3 A. I have no recollection of it.

4 Q. Did you have any discussion with Mr. Adler about
5 Coleco as a business or as a business opportunity for
6 Universal prior to the meeting with Mr. Greenberg?

7 A. Well, that's a very broad question. I have
8 testified earlier, and I want to segregate the two elements,
9 that Mr. Adler's interest in Coleco was that there was a
10 potential client for him to have an overall licensing
11 relationship with.

12 Mr. Sheinberg and Mr. Wasserman, and I suspect
13 Mr. Greenberg's interest, was broader than that, and that
14 is that we might become an equity owner of Coleco.

15 So I would think that my discussion -- I am
16 sorry to have to be that vague but my discussion with Mr.
17 Adler would most likely have been vis-a-vis Coleco as a
18 licensee, not -- I am not sure that I would have shared the
19 other type of information with Mr. Adler.

20 Q. I guess I was sort of focusing on what
21 information Mr. Adler might have shared with you.

22 A. Well, I have already testified that I have no
23 recollection of this.

24 Q. You see what's attached to that letter? Why
25 don't you take a look at that and make sure you didn't see

1 them perhaps separately from the letter. And we are
2 talking about defendant's Exhibit 2.

3 A. I don't have any recollection of having seen any
4 of this.

5 Q. Before the meeting did you have discussions with
6 any of your outside advisers about a possible investment in
7 Coleco?

8 A. Yes. Or I may have had discussions with other
9 people, but I don't believe I had them with Mr. Adler.

10 Q. First asking about your outside advisers. Did
11 you have any discussion with any of Universal- MCA's
12 outside advisers about Coleco and a possible Universal
13 investment or acquisition in Coleco prior to your meeting
14 with Mr. Greenberg?

15 A. I can't testify with certainty that it was prior
16 to, during, or after. I do know one thing, that there were
17 discussions with Felix Rohatyn of Lazard Freres concerning
18 Coleco.

19 Now, I think they were beforehand, but maybe
20 they were afterward. I just simply -- I can't make that
21 distinction X years later.

22 Q. You looked at some of Mr. Greenberg's deposition
23 testimony, is that correct?

24 A. Yes.

25 Q. Did you look at the part where Mr. Greenberg

8

1

testified that on May 7 in New York he met with Mr. Felix

2

Rohatyn?

3

A. Yes.

4

Q. And were you there?

5

A. Yes.

6

Q. Was Mr. Wasserman there?

7

A. Yes.

8

Q. Was anyone else from Universal there?

9

A. Not that I remember.

10

Q. Anyone else in Coleco there?

11

A. I don't think so.

12

Q. Was anyone else other than Mr. Rohatyn there

13

from Lazard Freres?

14

A. Not that I remember.

15

Q. And prior to May 7, 1982, which was, as I do my

16

arithmetic, ten days after your meeting with Coleco, had

17

you had any discussions with Mr. Rohatyn about investing in

18

Coleco?

19

A. Absolutely. The only unknown is did I have it

20

prior to or after the lunch that was taking place.

21

Q. Mr. Rohatyn is a director of MCA, isn't he?

22

A. Mr. Rohatyn is a director of MCA.

23

Q. And he was a director in April of 1982, wasn't

24

he?

25

A. I'm not even sure of that.

1 think you still have in front of you, you're clear that
2 that came from Mr. DiMuro and not Mr. Kroft, aren't you?

3 A. Unless it is an enormous forgery, yes, I am
4 clear.

5 Q. Did you know that Mr. Stein apparently consulted
6 with Mr. DiMuro after being sent out with your injunction?

7 A. I am very pleased to hear that.

8 Q. Did you know that he consulted with Mr. DiMuro?

9 A. Oh, I think at the time I did, because as I
10 testified to earlier whenever somebody mentioned King Kong
11 to me I would always say, you got legal advice on this.

12 Q. You see from -- I'll put in front of you
13 Defendant's Exhibit 79, which is a memorandum from Mr.
14 Sauber, to Mr. Stein.

15 A. Is there a pending question?

16 Q. I don't think so. I asked you to read this.
17 You see from what's in evidence as Defendant's Exhibit 79
18 that Mr. Sauber was relating Mr. DiMuro's advice about how
19 the tour King Kong character should be constructed to Mr.
20 Stein; is that correct?

21 A. Yes.

22 Q. And that advice that Mr. DiMuro gave in July of
23 1982, after Mr. Stein's people consulted with him, is the
24 same advice that he gave on April 8, 1982 to you, isn't it?

25 A. Well, it is what it is.

1 Q. I guess I am asking you a question, Mr.

2 Sheinberg.

3 Is it your understanding that the advice that
4 Mr. Stein got from Mr. DiMuro, in July of 1982, was the
5 same as the advice that you got from Mr. DiMuro on April 8,
6 1982?

7 MR. FAIRHURST: Objection, form.

8 THE COURT: Overruled.

9 A. I have no independent knowledge. All I know is
10 we have a copy of the memo he gave me. That's all I know
11 about that. Now, you have shown me a copy of a memo that
12 was sent by the lawyer for the tour division that reflects
13 what generally seems to me to be the same advice. I can't
14 add anything or subtract anything from those two memos.
15 They are what they are.

16 Q. Is it your understanding that Mr. DiMuro's
17 advice, as reflected in the April 8, 1982 and reflected by
18 the Sauber/Stein memo of July 1982, is the advice under
19 which Universal is currently operating with respect to the
20 King Kong character?

21 A. Unless Mr. DiMuro has changed his advice or
22 unless that advice has been changed by virtue of this
23 litigation, I don't know why it would change. But I really
24 don't know.

25 Q. When you called Mr. Hadl and gave him the Donkey

1 A. Yes. I'm emphasizing your word only. I would
2 prefer to say I got two.

3 Q. And no others that you recall?
4 A. Correct.

5 Q. Let me ask you this: Had you brought any
6 lawsuits against alleged infringers of Universal's rights
7 in King Kong?

8 A. I don't know.

9 Q. During the 1980-1981 and up to June 29, 1982
10 period?

11 A. I don't know.

12 Q. None came to your attention?

13 A. That lawsuits were filed to protect rights?
14 That I read about in the newspaper and it happens every day.

15 Q. You didn't read anything about Universal filing
16 lawsuits to vindicate rights in King Kong, did you?

17 A. Not that I remember.

18 Q. I guess what I am trying to find out, Mr.
19 Sheinberg, is when you had this telex, which was the day
20 after your meeting with Mr. Greenberg, and you are going to
21 send him a copy of this and you had this memorandum from
22 Mr. DiMuro, I was just asking you whether you recall today
23 taking that memorandum into account when you read this
24 telex.

25 A. To me, that memorandum would have been -- had it

1 been in my mind, which it wouldn't -- it would have been
2 the difference between tunafish and chicken salad.

3 Q. I guess your answer is you didn't take it into
4 account?

5 A. I sure didn't.

6 Q. Did you make any changes in the telex as
7 proposed?

8 A. Of course not.

9 Q. And you authorized them to affix your signature
10 to this telex?

11 A. Correct.

12 Q. When I say them, I am talking about Mr. Hadl?

13 A. Or Mr. Kroft.

14 Q. Did you recall discussing the telex with Mr.
15 Kroft?

16 A. No.

17 Q. And I take it, from your testimony, you
18 certainly didn't discuss it with Mr. DiMuro?

19 A. I don't recollect discussing it with anyone
20 other than Mr. Hadl and had I discussed it with these other
21 people I guess I might as well have fired Mr. Hadl, because
22 I wouldn't need Mr. Hadl.

23 Q. Is it fair to say, Mr. Sheinberg, that after you
24 told Hadl to call someone who you recall as being Schwefel
25 at Coleco that you didn't participate in the Coleco

1 A. I don't remember that.

2 Q. Mr. Sheinberg, this agreement you had with
3 Coleco would result in greater profits to Universal the
4 more Donkey Kong products that Coleco sold; is that correct?

5 A. Yes.

6 Q. Do you recall discussing with any representative
7 of Coleco the importance of making sure that nothing that
8 Universal did would interrupt that marketing program?

9 A. Mr. Greenberg was very anxious that he launch
10 his product and that his product be successful and he
11 certainly made that clear. I don't recall any additional.
12 He was very anxious -- I remember one thing that may or may
13 not be responsive to your question. Mr. Greenberg was very,
14 very anxious that, number 1, the Nintendo people not get
15 mad at him, because he felt beholden to them because he was
16 a relatively small fry in a world that he felt was being
17 taken over by Atari.

18 Number two, that in the event we felt compelled
19 to go against Nintendo in a legal action, we make it very
20 clear that he was not a subject of that legal action and
21 Mr. Greenberg wanted to and in fact did offer his good
22 offices in trying or in wanting to try to reconcile the
23 forces of Nintendo and Universal.

24 Q. Thanks, Mr. Sheinberg.

25 Did you learn all that from Mr. Greenberg at

1 Q. Do you remember having such a discussion?

2 A. No, other than, as I think I have indicated
3 earlier, our desire was and I am sure this was part of any
4 discussions I would have had, our desire was to amicably
5 settle this thing in some fashion.

6 Q. And it's your recollection, I believe you
7 testified to today, that it was after that luncheon you
8 made the decision to sue Nintendo?

9 A. Sometime thereafter, yes.

10 Q. Did you have any further discussions with Mr.
11 Hadl with respect to that decision you made?

12 A. I think -- I don't know what further discussions
13 mean because we have not said what discussions I had with
14 him. I think the substance of what I said to Mr. Hadl and
15 Mr. Hadl said to me is, we're getting nowhere, we're going
16 to have to file a lawsuit. We were given no encouragement
17 that we were going to get anything other than stonewalled.
18 We felt we had a case, at least so I was told and so Mr.
19 Hadl believed. We saw no legitimate alternative.

20 Q. Now, after the lawsuit was filed, Mr. Sheinberg,
21 did you have outstanding a direction at Universal with
22 respect to actions to be taken with respect to Nintendo
23 licensees?

24 A. I don't think so.

25 Q. Did there come a time during 1982 or 1983 that

1 you did have such a direction outstanding?

2 A. I think the only direction that was outstanding --
3 and I think this was discussed in my deposition -- was that
4 I expected us to enforce those rights that we thought we
5 legitimately had and not to waive any rights that we might
6 otherwise have and that gets to a basic credo of mine. I
7 think one of my mine responsibilities as president of MCA
8 is to enforce rights which we have in literary properties.
9 I don't feel that's a bad thing. I think that's my duty
10 and everyone who works for the company appreciates the fact
11 that we are to be vigilant in that area.

12 Q. Do you recall seeing a memorandum from Mr.
13 Newman to you and Mr. Hadl relating to Donkey Kong and an
14 enforcement program?

15 A. Do I recall it?

16 Q. Yes.

17 A. Why don't you show it to me and I'll see whether
18 I recall it.

19 Q. Let me ask you do you recall receiving such a
20 memorandum.

21 A. No.

22 Q. Let me show you Defendant's Exhibit 21 and ask
23 you if that refreshes your recollection as to whether or
24 not you received such a memorandum from Mr. Newman on
25 February 15, 1963.

1 A. I don't really recall it.

2 Q. Let me ask you this, Mr. Sheinberg: You
3 personally were involved in having Atari sign an agreement
4 with Universal?

5 A. I was involved.

6 Q. You spoke to Steve Ross; you know Steve Ross,
7 don't you?

8 A. Yes, I do.

9 Q. Was he the president of Warner Communications?

10 A. He still is unless something happened this
11 afternoon.

12 Q. They own Atari?

13 A. Yes, they do, did.

14 Q. You spoke to him and told him Atari is bringing
15 out a Donkey Kong product and they better sign an agreement
16 like Coleco signed with us, didn't you?

17 A. They better sign an agreement?

18 Q. An agreement like the Coleco agreement with us,
19 didn't you?

20 A. Well, I am quarreling with the notion that they
21 better. Is that or else?

22 Q. Yes, or else?

23 A. I had a conversation.

24 Q. Or else?

25 A. I had a conversation with Steve Ross someplace.

1 If memory serves me, it was at a consumer electronics
2 affair. Maybe it was someplace else. In the course of
3 that conversation, I told Mr. Ross as far as we were
4 concerned the Coleco -- the Donkey Kong property violated
5 our rights and the major licensee had signed an agreement
6 with us, to wit, Coleco and we would hope they would,
7 because I didn't want to be in the position of having to
8 sue them.

9 I didn't realize that later I would in fact be
10 in such a position on another matter. Mr. Ross indicated
11 to me that he would look into it, that he understood our
12 position and that was the substance of it.

13 Q. Was that the only discussion you had with anyone
14 at Warner Communications or at Atari with respect to their
15 signing up with Universal?

16 A. I may have had a similar conversation with a
17 fellow who used to be there called Manny Gerard. I think
18 he was present at the time and I may have had a separate
19 conversation with him.

20 Q. Do you recall having a conversation to that
21 effect with a Mr. Skip Paul?

22 A. I don't think I was that directly relating to
23 Skip Paul at that time. Someone was negotiating with Skip
24 Paul. I believe Mr. Haol. Whether or not I ever had any
25 conversations with Mr. Paul or not I don't know. I don't

9

1 recollect them. I do recollect the Steve Ross conversation.

2 Q. Did you tell either Mr. Ross or Manny Gerard
3 that Universal intended to aggressively pursue all
4 licensees of Donkey Kong?

5 A. I don't believe -- I don't remember what I told
6 him, other than the fact that we were going to protect the
7 property we thought was being infringed. I don't know that
8 I ever said we were going to pursue all licensees of Donkey
9 Kong.

10 Q. Did you have any conversation with Mr. Newman
11 during the first three months of 1983 with respect to
12 enforcing Universal's alleged rights against Nintendo
13 licensees?

14 A. With Mr. Newman?

15 Q. Stanley Newman.

16 A. The subject is this letter?

17 Q. That's right.

18 A. I don't recollect it.

19 Q. Do you recall having any discussion during the
20 first three months of 1983 with Mr. Newman with respect to
21 Ralston Purina?

22 A. I have only one recollection with regard to
23 Ralston Purina and that is that there came a point when I
24 was advised that some people from Ralston Purina had come
25 to us and offered us \$5,000 for us to give them a blanket

1 firm generally have access to the personnel of Universal
2 and MCA and merchandising in connection with legal affairs?

3 MR. KIRBY: Objection, your Honor.

4 THE COURT: Sustained.

5 Q. Do you know what the relationship is in terms of
6 the law firm Rosenfeld Meyer and Susman and Universal
7 insofar as contacts with the people are concerned?

8 MR. KIRBY: Objection, your Honor, asked and
9 answered.

10 THE COURT: Overruled.

11 A. The Rosenfeld Meyer and Susman law firm has not
12 only immediate and total access to anyone and everyone and
13 anything and everything that is the business of Universal
14 or MCA but they are as familiar with the people who do what,
15 the policies -- they frequently participate in drafting --
16 the procedures, the lawyers, the directors as anyone is at
17 MCA.

18 It is an intimate relationship of counsel to
19 client of long standing.

20 MR. FAIRHURST: No further questions.

21 RECROSS-EXAMINATION

22 BY MR. KIRBY:

23 Q. When was the last time you had a conversation
24 with Mr. Stephen Kroft?

25 A. My last conversation with Stephen Kroft was

1 probably a couple of months ago.

2 Q. I take it it was not on the subject of King Kong?

3 A. No. It was on the subject of Atari.

4 Q. On the subject of?

5 A. Atari.

6 Q. At the time you spoke to him Mr. Kroft I take it
7 was alive and in good health?

8 A. I think he's a new father somebody told me.

9 Q. Is it your information today that he is in good
10 health?

11 A. Today? He may have been run over by a car last
12 night.

13 Q. You have no information suggesting since you
14 last spoke to him that he has come upon ill times, do you?

15 A. Ill times?

16 Q. Yes.

17 A. Not since I last talked to him.

18 Q. And no one from Rosenfeld Meyer has informed you
19 in the course of your intimate relationship that Mr. Kroft
20 has been sick or mentally incapacitated or anything like
21 that?

22 A. No one has informed me that he has been mentally
23 incapacitated.

24 Q. Or sick?

25 A. I wouldn't expect them to tell me he was sick

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1 unless he had a severe heart attack.

2 Q. They hadn't told you that?

3 A. No.

4 Q. You were asked certain questions by counsel on
5 redirect.

6 Let me ask you this, Mr. Sheinberg: Do you
7 recall appointing Mr. Hadl director of outside litigation
8 for Universal?

9 A. Yes.

10 Q. Do you recall when that was done?

11 A. No.

12 Q. Mr. Hadl testified it was done around the
13 beginning of 1981. Does that refresh your recollection?

14 A. No.

15 Q. Did you cause a memorandum to be circulated
16 within MCA/Universal with respect to Mr. Hadl's new
17 responsibilities?

18 A. Yes.

19 Q. And did that memorandum emphasize that you were
20 concerned about the increasing cost of outside counsel?

21 A. Yes.

22 Q. And did that memorandum state that problems were
23 first to be considered in-house and only after Mr. Hadl had
24 concluded that outside counsel should be involved that
25 outside counsel should be involved?